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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ALBERT HAYES,

11 Petitioner,

12 v.

13 J. E. TILTON, Warden,

14 Respondent.

Civil No. 07CV0533 JAH(LSP)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

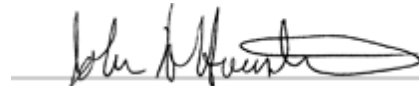
15 Petitioner, state prisoner appearing *pro se*, filed petition for writ of habeas corpus
16 pursuant to 28 U.S.C. § 2254, on March 21, 2007, challenging his conviction in state
17 court. On April 27, 2007, petitioner filed a motion seeking appointment of counsel to
18 represent him in this case. The Honorable Leo S. Papas, United States Magistrate Judge,
19 on May 23, 2007, denied petitioner's motion for appointment of counsel without
20 prejudice. Petitioner subsequently, on June 7, 2007, filed objections to the magistrate
21 judge's May 23, 2007 order, which this Court, on June 22, 2007, overruled. Petitioner
22 has now filed a notice of appeal of the Court's June 22, 2007 order, along with a motion
23 for a certificate of appealability.

24 A certificate of appealability is authorized "if the applicant has made a substantial
25 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To meet this
26 threshold showing, petitioner must show that: (1) the issues are debatable among jurists
27 of reason; or (2) that a court could resolve the issues in a different manner; or (3) that the
28 questions are adequate to deserve encouragement to proceed further. Lambright v.

1 Stewart, 220 F.3d 1022, 1024-25 (9th Cir. 2000)(citing Slack v. McDaniel, 529 U.S. 473
2 (2000) and Barefoot v. Estelle, 463 U.S. 880 (1983)).

3 Here, petitioner appeals this Court's order overruling petitioner's objections to a
4 denial without prejudice of a motion for appointment of counsel. In overruling
5 petitioner's objections, this Court agreed with the magistrate judge's determination that
6 appointment of counsel was not warranted because petitioner is "literate, articulate,
7 intelligent and reasonably well-versed in the law." Doc. # 24 at 3-4; Doc. # 20 at 4. This
8 Court finds that a certificate of appealability is not warranted in this instance because the
9 denial of petitioner's motion for appointment of counsel under the circumstances here is
10 not an issue debatable among jurists of reason nor could any other court resolve the issue
11 in a different manner. Lambright, 220 F.3d at 1024-25. Accordingly, this Court
12 **DENIES** petitioner's motion for a certificate of appealability.

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14 Dated: July 12, 2007

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16 HON. JOHN A. HOUSTON
17 United States District Judge
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